



Gov. E. M. Pease

ELISHA MARSHALL PEASE.

---

The subject of this memoir was born in Enfield, Connecticut, on the 3d of January, 1812. His early educational advantages were limited to the schools of his native town and a short attendance at an academy in West Field, Massachusetts. At the age of fourteen years he was placed as a clerk in a country store and early acquired a knowledge of accounts, and the habits of promptness and punctuality in business, which characterized him in after life and insured for him a successful career.

While in New Orleans on business in the fall of 1834 he was allured by the glowing accounts which he heard of the features and prospects of the country west of the Sabine, and determined to seek a home and fortune in its virgin wastes. He proceeded to Valasco and thence to the frontier settlements on the Colorado and located at Mina, now the town of Bastrop, where he began the study of law in the office of Colonel D. C. Barrett, who had just entered upon the practice of the profession. He pursued his studies with energy and vigor; but his clerical qualifications caused him soon afterward to be appointed secretary of the Committee of Safety for the jurisdiction of Mina, and in this capacity he began that active participation in public affairs which continued with intervals throughout his long, eventful and useful life.

The first sounds of the Texas Revolution in 1835 kindled the most ardent sentiments of patriotism and awakened every energy of its people. Mr. Pease was engaged in the first skirmish of the war at Gonzales, and was soon afterward made secretary of the council of the Provisional Government, and held that position until the government *ad interim* intervened in March, 1836. So marked and recognized

were his abilities that, although he was not a member of the convention which declared the independence of Texas, they were invoked to assist in framing the ordinances of the new government and the Constitution of the Republic. During the summer of 1836 he served successively as chief clerk of the navy and treasury departments, and for a short time acted as Secretary of the Treasury upon the death of Secretary Hardeman.

In November, 1836, he was appointed clerk of the Judiciary Committee of the House of Representatives, and drafted the laws organizing the judiciary of the Republic, and the laws creating and defining the duties of the various county officers. At the close of the first session of Congress in December, 1836, President Houston tendered him the position of Postmaster-General; but he declined the office and returned to the study of law in the office of Colonel John A. Wharton, of Brazoria.

In April, 1837, he was admitted to the bar at the town of Washington, but soon afterward accepted the office of Controller of Public Accounts. He resigned this position in the ensuing December and retired to Brazoria, where he resumed the practice of law in copartnership with Colonel John A. Wharton. In 1838, John W. Harris became associated with them, and after the death of Colonel Wharton, which occurred soon after, the firm of Harris & Pease continued for many years, and became one of the most distinguished in the State. During this period Mr. Pease served as district attorney for a short time, and after annexation, in 1846, was elected to the first Legislature from Brazoria County. In the business of this assembly he took an active part, and was the author of the laws regulating proceedings in the District Courts and of many other laws of importance enacted during that session. He was re-elected to the House in the second Legislature, and, as chairman of the Judiciary Committee, originated the probate laws of 1848.

In 1850 he was elected to the Senate in the third Legislature, and served during the regular session; but, being absent from the State when an extra session was convened

by Governor Bell during that year, he resigned and terminated his legislative services.

In 1853 he was elected Governor of the State and was re-elected in 1855. The period of his administration was one of great prosperity, and measures were adopted which promoted the permanent welfare of the State. The revolutionary debt of Texas was paid, a school fund of two millions of dollars was created; alternate sections of lands granted to railroads were set apart for the benefit of public schools; the lunatic asylum, orphan asylum, institutions for the deaf and dumb, and for the blind, were established, and ample grants of lands were made for their support. One hundred thousand dollars were set apart for a State university. All these measures were recommended by him and effected by his influence. The expenses of the State government were restrained below the amount of revenue derived from taxation, and at the close of his administration Texas was entirely free from debt. His rejection of the attempted deposit of the spurious Pacific Railroad bonds and other instances of watchful care over the interest of the State saved to it large sums of money. Governor Pease always acted with the Democratic party until the policy of secession drove him from it in 1861. He did not think that there was anything in the situation of affairs to justify that measure, and he viewed it as a sure path to disaster and humiliation. He remained in Texas during the war, but took no part in public affairs, and after its close acted with the Republican party. In 1867 he was appointed Provisional Governor of the State by the military authorities and held that office until 1869, when he resigned in consequence of a difference of opinion between him and the commander of the district in regard to the reorganization of the State government. He represented Texas in the convention at Cincinnati in 1872, which nominated Horace Greeley for President. In 1874 the office of collector of the port of Galveston was offered him by Secretary Bristow, which he declined, but accepted the position in 1879 when it was tendered him by President Hayes, which was his last public service. He was afterwards vice-president of the First National Bank

of Austin, and died at Lampassas on the 26th of August, 1883.

Governor Pease was endowed with intellectual talents of a high order. He was quick to perceive the character and gist of a proposition, acute in discerning those features of a question which form the hinges of reason, and prompt in the exercise of a sound judgment. He possessed great intellectual independence, and, however extensive may have been his knowledge of the opinions of others, always relied upon himself for a satisfactory and conscientious solution of the facts and principles which underlaid the subjects of his investigation.

As a lawyer these qualities rendered him a safe and sure-footed guide and counselor. His conclusions were the result of a deep and patient search for truth. His judgment was sustained by a calm, impartial and discriminating mind, and his views were maintained with honesty and candor. Few lawyers were more expert in determining the merits of a case upon proper statement of the facts, and he never counseled hopeless or doubtful litigation, but made it a rule to advise his clients that a bad compromise was often better than a good suit.

In consequence of an impediment in his speech he made no pretensions to oratory, and rarely made an oral argument at the bar; but when he did address the court or jury, notwithstanding his disadvantages, so great was the confidence reposed in his judgment and sincerity that he never lacked the most interested attention, nor failed to make a favorable impression. His briefs were always clear, fair and logical, and while his patient research armed him with every available feature, he never sought an undue advantage. So fixed and prominent were these traits that Chief Justice Wheeler once said that the statements of the facts in his briefs were always so lucid and just he could rely upon them without reference to the record.

Candor and sincerity were the ruling traits of his character. He followed the guide of principle and never temporized with expedient; but while he possessed an adamant will, he was quick to recede from a position

which could not stand the test of reason and experience. These qualities would have rendered him an excellent judge. His decisions would have been strictly upon the merits of a case, regardless of the persons who might have been the parties to the contest. He considered the law as the common base of society, upon which every member should stand with a fair and equal footing; and its proper administration the most sacred function pertaining to human affairs. The deep indentations which its great principles had wrought in his mind met with reciprocal impressions upon his heart, and it was to him truly a "rule of action" in all the relations of life, which he delighted to enforce upon those who sought to violate its precepts or evade the dictates of justice. His accurate perception, acute analysis and superior judgment enabled him to eliminate from almost every medley of circumstance or contrariety of precedent the principles of truth and equity. He was thoroughly familiar with the laws of Texas, and with the elements and peculiar combination of its jurisprudence, which he knew in its origin and in all the phases of its development. This, with his unswerving integrity and known love of justice, invited confidence and patronage, and he was one of the most successful practitioners in the State.

His strong will and independent interpretation of the nature and import of events impelled him, while he was Provisional Governor, to advocate a policy obnoxious to a large majority of the Texan people. But it was not the dictate of partisanship, as charged by his opponents. He was as honest in his political convictions as in his legal opinions. It was an error arising from the novelty of circumstances, rather than from a capricious will or inimical design. He believed that the tenets and policy of the dominant party, emerging from the results of the civil war, were permanent and unalterable, and that the sooner and more effectually they were accepted and enforced, the sooner would peace and prosperity be re-established. But when, during the administration of Governor Davis, he saw the iniquities to which they might lead, he recoiled from

the partisan excesses of that executive and threw his great influence into the scale of conservatism.

In private and social life, Governor Pease was a model of propriety and gentility. He carried his best qualities into the circles of friendship and affection, and in all his dealings with his fellow-men not a breath of injustice or undue advantage marred the faith reposed in his personal integrity. His word was deemed a sufficient seal to any obligation, and no man was more readily and safely trusted. He was congenial, generous and kind-hearted, and his home was the seat of a genuine and flowing hospitality. He was married in 1850 to Miss L. C. Niles, of Windsor, Connecticut, and this accomplished and most excellent lady still maintains, at her elegant seat near Austin, the hospitality which, in his lifetime, welcomed his friends to his generous board.

In all the relations of life, he made the Golden Rule his motto. He was always satisfied with his own and coveted nothing belonging to his neighbors. He was a model husband, father and friend, and, above all, an honest man and a patriot. The record of his public services form some of the brightest pages of Texas history, and it would be difficult to find a Governor or statesman who has done more for the prosperity of his State and the happiness of his people.

The talisman of his success was a continued, strenuous and determined effort. He followed the polar star of duty, as seen through the glasses of conscious rectitude, and he was always true to the cause of virtue. It has been said that the bar instructs the bench no less than it is instructed by it, and, while Governor Pease never held a judicial office, his genius impressed itself upon Texas jurisprudence, and his name will ever be associated with the munificent and charitable polity which has become the pride and honor of the State.

In his message to the Legislature, on December 23, 1853, he said:—

“In recommending measures for your consideration, I shall mainly confine myself to a few of those important

and leading ones that seem to have been designated by public opinion for the action of the present Legislature, the early adoption of which will tend rapidly to develop the resources of the State, and to promote the happiness and prosperity of its citizens.

“Of these measures, one of the most important is, to make a suitable and permanent provision for the support of public schools. The highest and most sacred duty of a free government is, to provide the means for educating its citizens in a manner that will enable them to understand their duties and their obligations; this, too, is a measure that is enjoined upon the Legislature by the Constitution.

“The want of available means has heretofore furnished a ready excuse for the neglect of this duty. But this no longer exists. The State now has ample means at its command, and an opportunity is offered to establish a system of public schools that will extend its benefits to every child within its limits; if we fail to embrace it, we shall be faithless to our duties and the trust that has been reposed in us by our fellow-citizens.

“It is respectfully recommended, that two millions of dollars of the United States five per cent bonds, now in the treasury, shall be appropriated and set apart as a permanent fund for the support of public schools. That the income of this fund shall be annually apportioned to the several counties of the State, according to the number of free children in each between the ages of five and sixteen years, to be ascertained in such manner as may be considered most convenient; and that the amount due to each county shall be paid over to the county treasurer semi-annually, to be disbursed under the orders of the county courts, to such teachers as the parents or guardians of the children may choose to employ for their education.

“I do not pretend to recommend this as a perfect system; but its operation will be simple and cheap; it may be commenced without delay, and it seems to be better adapted to our situation than any other system that has come under my notice. A plan very similar to this has succeeded well in some of the neighboring States, where the population is



sparse, like our own. Time and experience will point out the defects of the system proposed, and enable us by future legislation to perfect and adapt it to the situation and wants of our population.

“I would also recommend that the amount which has already accumulated by the appropriation of the one-tenth of the annual revenue of the State derivable from taxation, be added to the principal of this fund, and that for the future, this tenth be apportioned in the same manner as the income of the fund.

“Under the present provisions of the Constitution, the lands that have been donated to the several counties for public schools can not be alienated in fee, nor disposed of otherwise than by lease, for a term not exceeding twenty years. In a State where land is so cheap as it is here, and where so large a quantity is in market, it can not be expected that under these provisions any benefit will be derived from these school lands during the present generation. Much of it is located in large bodies, in sections of the State where it would be improved if subject to sale. The policy of reserving from sale, and consequently from cultivation, such large bodies of land, may well be questioned, and I recommend to your consideration the propriety of an amendment to the Constitution, by which these lands may be alienated under the direction of the Legislature, upon the petition of a majority of the citizens of the county owning the lands.

“If such an amendment were adopted, these lands might be subdivided into small and convenient tracts, and each alternate tract might be sold upon a long credit, at not less than a minimum price; the purchaser to pay an interest of six per cent on the amount of his purchase, to be annually expended in the same manner as the school money distributed by the State. By adopting this policy, most of the counties would derive some immediate benefit from their school lands, and the alternate tracts reserved from sale would much more rapidly increase in value.

“The want of a good university in the State, where a liberal education can be obtained, is a serious inconve-

nience. It should be our policy to furnish, within our own limits all the means for obtaining an education, that can be had in any part of the Union, so as to remove the necessity of having to send our youth abroad to be educated among those who are hostile to the policy and institutions of the State.

“The present seems to be a favorable time to lay the foundation for such an institution, and I respectfully recommend that the sum of two hundred and fifty thousand dollars of the United States bonds now in the treasury, be appropriated and set apart as a perpetual fund, the interest of which shall be applied to the erection and support of a State University. The income of such a fund, with the amount that may hereafter be realized from the lands that have been set apart by an act of the late Republic, will, at no distant period, enable us to build up a university fully adequate to all the wants of our State. I am aware that these lands were appropriated for the establishment and endowment of two universities, but I suggest for your consideration, that it would be better to have one well endowed institution of the kind, than to apportion our funds for the erection of two, neither of which could afford the advantages which are furnished by similar institutions in other States of the Union.

“Should such an appropriation be made, it will be necessary to pass laws for the location of the proposed university at some central point, convenient to the entire State, as well as for the erection of the necessary buildings and for the organization and government of the institution.

“The establishment and endowment of an asylum for lunatics, and an institution for the education of the deaf and dumb, are measures that should commend themselves to your consideration. Our census tables show that we have in our midst many of both of these unfortunate classes, who have a claim upon our sympathy and bounty, and who now have to be sent away from their friends to distant parts of the Union, in order to obtain the means of alleviating and improving their condition.

“Institutions of this character can not be established in

a State so new as ours, except under the care and patronage of the government, and I recommend that the sum of five hundred thousand dollars of the United States bonds be appropriated and set apart as a perpetual fund, one-half for each of these institutions, the income of which shall be applied to their erection and support. Should you concur in this recommendation, you will of course pass the necessary laws for their location, establishment and government.

“These appropriations will absorb a large portion of the United States bonds now in the treasury, but the objects for which it is proposed to use them are of great practical utility, and will be productive of benefits as lasting as the institutions under which we live.

“The improvement of our navigable water-courses and the construction of railroads are measures of great interest to our citizens, and have deeply engaged public attention. Our past legislation has frequently been directed to these objects, but it has been productive of little if any benefit.

“The rejection, at the late election, of the river bill of the last session, can not be fairly considered as an expression of the people against the policy of attempting to improve our navigable rivers. That bill was defective in its details, and made insufficient appropriations for those streams that are susceptible of being improved, while it contained many appropriations for objects of questionable utility. It should be borne in mind that our large rivers have, without any improvement, hitherto furnished the means of transporting most of our productions to a market, and we must continue to rely upon them to a great extent for many years, even if the construction of railroads shall proceed as rapidly as is anticipated by their most sanguine friends. It is believed that a moderate expenditure of money by the government would greatly increase their usefulness and add largely to the value of the taxable property of the State. If such be the case, it certainly is an object worthy of your encouragement and patronage.

“The advantages to be derived to our State from the

construction of railroads, are too obvious to require demonstration; the necessity for them is felt and acknowledged by all, and it is a question of great interest to our citizens to devise and adopt some policy, by which we can secure their construction at the earliest period.

“The limitations imposed by the Constitution upon the power of the Legislature, preclude the State from undertaking these improvements or becoming a part owner of the stock of any corporation created for that purpose. The active capital in the hands of our own citizens is insufficient to secure their construction, but, for the attainment of this object, we may hold out sufficient inducements for the introduction of capital from abroad. It can not be disguised that the population and business of the State are not such, as at this time, to promise the return of an immediate profit on the amount that may be invested in such enterprises. Indeed, it may well be doubted whether a railroad in any section of the State would, for the next five years, pay an interest of five per cent on the amount invested, in addition to the cost of repairs and other expenses necessary to keep the road in operation. If, therefore, we would invite the employment of capital from abroad, in railroads in this State, we must hold out such inducements of ultimate profit as will compensate the holders of it, for the small interest they will receive during the first years of its investment. Fortunately, the large extent of our public domain will enable us to do this, without imposing any onerous burden on our citizens.

“I had intended on this occasion to present you my opinions in relation to the best mode of securing the passage across our State of the proposed railroad to the Pacific Ocean; but this is now rendered unnecessary by the bill which you have already passed to provide for the construction of the Mississippi and Pacific Railroad. While the principal provisions of this law are unobjectionable, I think it might have been improved in some of its details, particularly in that provision which authorizes the company to receive patents for the lands selected previous to the completion of the entire road.

“It is to be hoped that this law will accomplish for the State all that is anticipated by its friends.

“The duties and responsibilities imposed upon the Governor under the provisions of this law will be cheerfully undertaken, and I shall endeavor to execute them in a manner calculated to effect the objects intended by the Legislature.

“In adopting any general system for aiding other companies in the construction of railroads, we find ourselves embarrassed by the numerous charters that have heretofore been granted to individuals, without any specific designation of the routes they were to pursue, who still hold and rely on them, although not a dollar of capital stock has ever been paid. It is much to be regretted that instead of granting charters indiscriminately to all who applied, without any assurance that the applicants were possessed of the necessary means to comply with their provisions, the State did not first locate and survey such routes as the wants of commerce and the business of the country seemed to require, and then grant charters for these routes to companies who should organize after a subscription of stock, with an amount actually paid at the time of subscribing sufficient to show an intention of prosecuting the work in good faith. Had this course been pursued, our statute books would not have been incumbered with railroad charters, many of them commencing nearly at the same point, and conflicting with each other in the routes they propose to pursue, nearly all of which have expired, or are about to expire, without having accomplished anything beneficial to the public.

“In regard to such charters as have been heretofore granted, I respectfully recommend that no extension of time shall be granted to any company, unless satisfactory evidence is presented, that it has actually commenced the construction of its road, and that a sufficient amount of stock has been paid to give a reasonable certainty that the road will be completed. I would also suggest that in all such cases, the route and termination of the road shall be designated, when this has not been done in the original charter, and if any further donations of land are made to

such companies, they should receive the patents only on the final completion of their roads.

“In extending aid to future railroad enterprises, we ought to avoid the evils that have attended our past legislation on the subject.

“I would suggest that all charters hereafter granted to railroad companies, should specifically designate the route to be pursued as well as the commencement and termination of the road. That they should appoint commissioners to receive subscriptions for stock, a portion of which should be paid at the time of subscribing, and whenever a reasonable amount of stock has been subscribed on these terms, the stockholders should be permitted to hold an election and organize the company. That the charter should also limit the time within which the companies shall commence their roads, and prescribe the number of miles to be constructed from year to year, until their final completion. The State should grant bounties of land sufficient to induce capitalists to become stockholders in companies thus organized, the land to be selected from time to time, as the road progresses, but no title to be issued until the road shall be completed according to the terms of the charter. These companies should be required to alienate the lands thus acquired within a limited time after the completion of their roads. Should this course be adopted, the State would secure the construction of valuable works of internal improvement, before she parted with her lands, instead of being liable to have the works abandoned after those portions have been constructed which promise an immediate profit.

“I would also suggest that the alternate sections upon the line of the Mississippi and Pacific road be granted to other roads connecting this with our gulf ports, with the Vicksburg road and the New Orleans and Opelousas road at such points as will best accommodate the different sections of the State. Such a disposition of these sections is but just, since the portions of the State through which these branch roads are to be built, will receive no immediate

benefit from the Pacific road unless they are thus connected with it.

“In addition to the aid proposed to be extended to railroads in the manner heretofore indicated, I think it would be good policy to authorize the school fund, the university fund, and any other funds that may be set apart by the State for charitable and benevolent uses, to be loaned out, from time to time, to railroad companies, in this State, as they may progress with the construction of their roads. I entertain no doubt in relation to the power of the Legislature to make this disposition of these funds. The period is not very remote when the United States bonds will be redeemable, and necessity will then force us, if we would derive an income from their proceeds, to make some investment of them. If they can be securely loaned out, so as to be used in the prosecution of works of improvement calculated to develop the resources of the State, and contribute to the wealth and convenience of our citizens, it is our duty to make this disposition of them.

“Should these views meet with your approbation, I recommend that a Board of Commissioners be established, to consist of Controller, Treasurer and Secretary of State, who shall be authorized, with the concurrence of the Governor, to loan these funds at six per cent interest per annum, payable semi-annually, for a period not exceeding twenty years, to companies chartered by this State, for the construction of railroads and other works of internal improvement. The amount loaned to any company in no case to exceed the one-third of the actual cost of the works that have been constructed, and to be well secured by a lien on the property of the company, subject to be enforced without a suit, by a sale after sixty days' public notice.

“The condition of the Indian tribes within the limits of our State calls for some action on the part of the Legislature. Our situation in relation to this class of population is different from that of any of the other frontier States of the Union. In these the General Government has the sole and exclusive control of the public domain over

which the Indians formerly roamed, and under the power given by the Constitution to Congress to regulate commerce with the Indian tribes, that department has assigned to them certain limits which they are to occupy, and regulates all intercourse between them and the whites, and also between the different tribes. Under this policy, Indian depredations have ceased for many years. The General Government has the same power to regulate intercourse with the tribes within our limits, but it can not be efficiently exercised, because having no right in the public domain, it can not set apart any particular district for their occupation, and without this their movements can not be controlled. I respectfully suggest that a portion of our vacant domain, remote from the settled parts of the State, shall be appropriated for the temporary occupation of those remnants of tribes that properly belong to this State; that all locations within the limits thereof be prohibited, and that a qualified jurisdiction for Indian purposes be ceded to the General Government for a term of years, provided she will engage to remove them within those limits and keep them there, subject to her laws regulating intercourse with the Indian tribes.

“The business before the Supreme Court is increasing so rapidly that it will soon be impossible, with the present number of judges, to dispose of the docket during each term; indeed, the number of cases now taken to that court is so great that many important ones are continued over from term to term for want of sufficient time to give them that thorough investigation which the vast interests involved require at the hands of the judges. Much of their time is consumed in preparing the written opinions which they are required to give in each case. By increasing the number of judges, this labor will be divided, and more time given to the examination and decision of causes. I therefore recommend an amendment to the Constitution, so as to give the Legislature the power to increase the number of judges to five. Should you concur in this recommendation, I suggest that you, at the same time, propose an amendment, giving to the Governor power to fill all vacancies that may



occur in the Supreme and Districts Courts, and in the offices of Attorney-General, District-Attorney, Controller, Treasurer and Commissioner of the General Land Office, by appointment, to continue in force until the vacancy can be filled by the people at the next regular election for State or county officers. Under the present provisions of the Constitution, should any of these officers die or resign, the office must continue vacant until an election can be held, which will take several months. Such an amendment would obviate the necessity that now exists for frequent elections at different periods in the year, and subserve the public interest by having these offices temporarily filled, immediately on the happening of a vacancy.

“In connection with this subject, I feel it my duty to call your attention to the inadequate salaries now paid to the judges of both the Supreme and District Courts. The duties of these offices are very laborious, and they should be filled only by men of stern integrity, and of superior legal attainments. It would seem needless to argue that, in order to secure men of qualifications adequate to the important and laborious duties which they have to perform, a just compensation should be paid for their services. It must be obvious to all, that the present incumbents of these offices have never received salaries commensurate with their labors and merits. I trust that this subject will not fail to receive your early attention and efficient action.

“Your attention is invited to the law regulating appeals to the Supreme Court in criminal cases, under the provisions of which, in all cases, not capital, the prisoner, after conviction, by taking an appeal, is permitted to be released on bail. For several offenses persons may be confined to hard labor in the penitentiary for fifteen years; for others they may be confined in like manner for life; still, by this law, they, by taking an appeal, are entitled to bail after they have been convicted by a jury, and thus in all cases, except treason, and murder in the first degree, convicts have it in their power to purchase exemption from the penalties of our criminal laws. It is hoped that this evil will be remedied without delay.

“It is believed that an examination of our criminal laws will show, that there are some offenses for which free persons may be subjected to the barbarous punishment of whipping. These provisions are inconsistent with the general spirit of our criminal laws, and ought not longer to be retained.

“Our laws, both civil and criminal, in my judgment, require a careful revision. We have adopted, it is true, the best portions of two different systems, but this was not done at the same time, and it was usually effected by crude and hasty legislation; as a necessary consequence, these different parts have never been brought to combine into one harmonious system. Our rules of pleading and of practice in the courts are meagre and exceedingly defective. Our statutes concerning crimes and punishments were often passed without reflection, many of their provisions conflict with each other, and these, more than any other portions of our laws, require to be carefully revised and amended. These are defects which hasty legislation can not cure.

“I would recommend that you make a suitable provision for the appointment of a commission of three gentlemen learned in the law, whose duty it shall be to prepare a code of civil and one of criminal procedure; and also a code of general laws or rules of decision, and that all these be reported for the action of the next Legislature.

“Should this be done with ability and care, our system of procedure might be better adapted to the attainment of the ends of justice than any other which has been devised, and the whole of the rules and principles of the general laws, which are now diffused in an almost endless number of text books and reports, could then be contained in a single volume. This would be accessible to all, and should be adopted, as near as possible, to every comprehension.

“For the reasons mentioned above, it is evident that there is a stronger necessity for a revision and modification of our laws than those of any other State in the Union. Besides, we should receive aid from the lights furnished by the successful experiments of several of our sister States. I feel entire confidence in recommending this measure to

your attention as one calculated to be productive of vast advantage to the State.

“Our territory is so extensive and so sparsely settled that but little is yet known of its agricultural and mineral capacities. This must continue to be the case, if we wait for the slow process of settlement to develop them. It is believed that an accurate and scientific geological survey of the State will disclose sources of wealth and prosperity that would otherwise remain unknown for years; besides giving an accurate knowledge of our mineral wealth and its localities, it will doubtless show the capacity of our soil for the production of many profitable articles for export, the cultivation of which is now entirely neglected. By diffusing this information abroad, we shall make known the great inducements that our State offers to emigrants, and insure a large increase of population. I recommend this measure to your serious consideration.

“I think it important that provision should be made for running and marking the boundary between Texas and the territories of the United States, from the point where it leaves Red River to where it intersects the Rio Grande. This duty might be imposed upon those who are selected to make the geological survey, without incurring much additional expense. The execution of any law that may be passed on this subject would, of course, be dependent upon a law being passed by the Congress of the United States for the appointment of commissioners on her part to join in the work. It is believed that our Senators and Representatives in Congress would have no difficulty in procuring the passage of such a law, if the initiatory step be taken on our part.

“The penitentiary, as at present conducted, is a heavy expense to the State. It is believed that if the buildings were completed and enclosed with a wall, according to the original plan, and suitable workshops erected, the labor of the convicts might be let out to the highest bidder, for a term of years, for an amount more than sufficient to reimburse the expense of their maintenance. Under such an arrangement, the contractors should be required to em-

ploy the convicts either in manufacturing, or at such trades as would be least calculated to interfere with the mechanical industry of the State. It is hoped that this subject will receive that attention from you which its importance demands.

“The laws granting pre-emption rights to actual settlers upon the public domain are somewhat obscure and conflicting in their provisions. I think it advisable that they be revised and so changed as to grant to each settler only two hundred acres of land. This is the quantity protected by the Constitution, as a homestead to each head of a family, and is sufficient for farming purposes.

“In connection with this subject, I call your attention to the law in relation to the right of aliens to hold lands. We are daily receiving large accessions to our population, by immigration from foreign countries. The first wish of these immigrants, on their arrival here, is to secure a home and an interest in the soil; but they are now denied this privilege until they have resided here five years — the period required for their naturalization. In many of the States of the Union, laws have been passed authorizing aliens to hold lands immediately on their arrival, provided they make a declaration under oath of their intention to become citizens. Some of them have gone so far as to incorporate a provision in their Constitution, giving to aliens all the rights of citizens of the State at a period much earlier than they can be obtained under the naturalization laws of the United States. This policy has secured to these States a large portion of the foreign immigration for the last few years, and has added much to their productions and wealth. If the same liberal policy were here adopted, similar advantages could not fail to result to our State.

“The State has heretofore made ample provision for a just and equitable settlement and payment of our revolutionary debt, and a portion of our creditors have acceded to the settlement of their claims, and received payment therefor; others refuse to acknowledge the right of the State to ascertain and fix the amount of her indebtedness to them, and insist upon receiving the face value of their

claims, although they were issued by the government at rates varying from twenty to seventy cents on the dollar. In consequence of this refusal, five millions of the five per cent stock that were to have been issued under the provisions of the act of Congress, approved the 9th day of September, 1850, proposing to the State of Texas the establishment of her northern and western boundaries, etc., are still unavailable to the State. A reasonable time has already been allowed for these creditors to accept of the terms proposed, and receive payment of the amount due them. I therefore respectfully suggest that a law shall be passed designating a time within which all holders of recognized claims against the State of Texas shall present them to the Treasurer, accompanied with releases of all claim against the United States for or on account thereof, in the form that has been prescribed by the Secretary of the Treasury, and approved by the President of the United States, or that such claims shall be forever barred and the holders no longer recognized as creditors.

“The late period of your session at which I have an opportunity to make this communication, reminds me of the inappropriate time that the Governor enters upon the discharge of his duties. While the Legislature and the Governor are elected at the same time, about seven weeks intervene between the commencement of the labors of these different departments of government. It is believed that if they entered upon their duties simultaneously, the sessions of the Legislature would be less protracted, and a large amount of expenditure saved to the State. I therefore recommend that the Constitution be so altered as to require the Governor to be installed at the commencement of the regular sessions of the Legislature.

“Many other subjects of legislation, both of general and local interest, which have not here been noticed, will doubtless suggest themselves to you.

“The situation of Texas at this time demands practical legislation.

“I trust that all sectional feelings and prejudices will be discarded from your councils, and that every measure will

be examined and acted upon solely with reference to its merits, and the effect it may have upon the interest of the State at large.

“Our present condition is a most prosperous one, immigration and wealth are pouring into the State more rapidly than at any former period. A spirit of enterprise and improvement is now abroad among our people, which, if judiciously fostered and encouraged, will at no distant period enable Texas to occupy that position among her sister States to which she is entitled from her extent of territory and great natural resources.

“It is my sincere desire that you may be able hereafter to reflect that your labors have contributed much to elevate the moral, social and political condition of the State.”

In his message to the Legislature in 1855, he said : —

“I invite your attention to the importance of establishing a State University, which shall afford to our youth all those opportunities for obtaining a liberal education that are to be found in any part of the Union. We can not appreciate too highly the advantages of educating our children within the reach of parental authority, where they can daily witness the practical operation of our Government, its institutions and laws, and become familiar with the habits and sympathies of the people with whom they are to associate in after life.

“To secure these advantages is worthy of an effort on the part of the State, and I recommend that the sum of three hundred thousand dollars of the United States bonds now in our treasury, be appropriated as a permanent fund to be increased by the proceeds of the gradual sale of the University lands, at not less than a minimum price, after they shall have been subdivided into small tracts, and that the income of this fund be applied to the erection and support of such an institution.

“This will enable us within a few years to erect the necessary buildings, employ professors in every branch of literature and science, and place the institution on a sure basis for future prosperity and usefulness.

“I also call your attention to the necessity of establishing

an Asylum for Lunatics. If we had such an institution in our midst, where those who are afflicted with insanity could be promptly placed under the care of persons skilled in its causes and treatment, a large portion of those unfortunate persons might be restored to reason, and the condition of all greatly alleviated.

“ We also need an institution for the education of the deaf, dumb and blind, where these unfortunate classes may be taught their duties and responsibilities as citizens, and made useful members of society.

“ Institutions of this character are necessary in every community, but they can not be founded and supported without the care and patronage of the State.

“ I therefore recommend that two hundred and fifty thousand dollars of the United States bonds, now in our treasury, be appropriated as a permanent fund for the erection and support of a lunatic asylum, and a like amount as a permanent fund for an institution for the education of the deaf and dumb and blind, and that provision be made for the erection of these institutions as soon as the income of these funds will permit.

“ If we could create and encourage among our citizens a spirit of independence and attachment for their own State, we ought to furnish them at home with all those facilities for improving and ameliorating their mental, social and physical condition, which are to be found in other parts of the world. We now have the means of doing this without imposing onerous burden upon our citizens, and if we neglect to avail ourselves of this opportunity, we shall be justly charged with being unmindful of the high duties and responsibilities that rest upon us.

“ In compliance with the provisions of ‘ An Act to provide for the construction of the Mississippi and Pacific Railroad,’ approved the 21st of December, 1853, proposals for its construction were, in the first instance, invited, until the 1st of May, 1854, but before the arrival of that period, it became apparent that the time allowed for receiving proposals was too short, and it was extended to the 1st of August of the same year.

“On the day to which the time had been extended, the propositions were opened, and it was ascertained that but one had been received which came within the provisions of the law. This was accepted, and on the 31st of August a contract was concluded for the construction of the road.

“The contractors subsequently failed to make such a deposit as the law required, and the contract was declared to be null and void.

“Upon the failure of this contract, proposals were again invited, but none have been received.

“Some of the contractors contended, for a time, that the deposit offered was a good one, and that they were entitled to the contract. But assurances have been received from those contractors, who are citizens of Texas, which includes all of them but two, that the company has never been organized, and that they consider the contract forfeited, so that the whole subject is still within the control of the State.

“It is a matter for your consideration whether this law shall be continued in force.

“The great advantages that would accrue to Texas from this road, makes it a subject of deep interest to all classes of our citizens, and should induce all to favor the measure if a reasonable hope is entertained that it will be constructed under the law.

“As a part of a great national highway from the Mississippi River to the Pacific Ocean, it is probable that the liberal grant of land offered by this law, would secure its construction, provided similar inducements were offered for the construction of a road from the Mississippi River to its point of commencement, and also for its continuation from El Paso to the Pacific Ocean. But as a mere local road from the eastern line of the State to El Paso it would not prove to be a profitable work, during the present generation.

“As far west as the Colorado River this road would pass through a region that would, in a few years furnish sufficient transportation and travel to make it a paying road, but until a road shall have been constructed from the



Mississippi River to its point of commencement, the uncertainty and expense that would attend the transportation of the iron and other materials to its point of commencement would be so great as to deter any company from undertaking even this part of it.

“It is possible that a company may be found who will undertake the construction of this portion, provided they are allowed to construct a road upon the same terms from the head of permanent navigation on the waters of some of our bays, up to the line upon which it is proposed that the Pacific road shall run, and then east to the eastern line of the State, and west to the Colorado River.

“This change would make an immense saving in the cost for the transportation of materials, for they could be brought to the point of commencement with the same facility that they could be carried to the Mississippi River, and from thence they could be transported over the road as it progresses, at an inconsiderable cost.

“It will be found, however, that it can not be constructed at the rate of one hundred miles for each year; few if any roads in the United States have been constructed at the rate of fifty miles a year, and it will severely tax the energies of any company, whatever may be its resources, to construct a road at that rate.

“These reflections will suggest themselves to every one who takes a practical view of the subject, and should be considered by you in determining your action in regard to it.

“The present is a favorable time to revise our legislation in regard to railroads generally.

“We have chartered thirty-seven railroad companies, and have held out greater inducements for their construction than were ever before offered by any government.

“It is now nearly four years since a bonus of eight sections of land was offered for each mile of railroad constructed, and nearly two years since the bonus was increased to sixteen sections a mile for each twenty-five miles.

“The result of these efforts has been, that we have one road of about thirty miles in operation, from Harrisburg on

Buffalo Bayou to the neighborhood of Richmond on the Brazos River, and two others, "The Galveston and Red River Railway," and "The Galveston, Houston and Henderson Railroad," in the course of construction, with a reasonable prospect, as I am informed, of completing twenty-five miles each by the 30th of January next, in time to avail themselves of the bonus of sixteen sections.

"So far as I have been able to learn, no other company is now doing any work under its charter.

"I do not think it advisable to renew any of the charters heretofore granted, or to give relief to any company organized under them, unless such company is now actually at work upon its road, and can show that it has expended a considerable amount of money thereon, and has the ability within a very short period, to complete the number of miles necessary to entitle it to land under the laws now in force.

"No new charter should be granted over a route where a road is already being constructed, or so near such route as materially to impair its value.

"Every railroad company should be required to hold all meetings, for the election of its officers, within the State, and to have a majority of its directors resident citizens thereof, and also to keep its principal office for the management of its affairs within the State.

"By adhering to these rules we shall correct many of the errors that have attended our past legislation on the subject.

"I am unwilling that any new charters shall be granted to individuals for their own benefit. If new charters are necessary, let such routes be selected as the wants and business of the country require; designate their points of commencement and termination, and grant charters to commissioners who should be required to open books for the subscription of stock, after giving public notice. No subscription should be received unless five per cent thereof is paid at the time of subscribing, and whenever the percentage on the capital stock subscribed shall amount to one hundred thousand dollars, let the commissioners be authorized to call a meeting of the subscribers and hold an election for officers;

after which the subscribers should become a corporation with all such powers as are set forth in the charter. The commissioners should have no right under the charter, except as trustees, for the benefit of the subscribers when they organize and become a corporation, and should be liable to a heavy penalty for receiving subscriptions of stock without the payment of five per cent thereof in cash. The corporation thus organized should have authority from time to time to receive further subscriptions to its capital stock, to the full amount thereof, after giving public notice, the subscribers in all cases paying five per cent of their stock at the time of subscribing.

“If we pursue this course, our railroad charters will cease to be offered for sale by individuals who have obtained them for purposes of speculation. Those who wish to construct railroads will obtain charters without paying a premium to the persons who have induced the Legislature to pass them, and we shall have no more companies organized without capital to impose on the credulous and unwary, and stand in the way of those who have the disposition and means to construct railroads.

“While so little has been accomplished under the policy heretofore pursued by the State for the encouragement of railroads, it becomes us to consider well what we may reasonably expect to be done hereafter by a continuance of this policy.

“The Buffalo Bayou, Brazos and Colorado Railroad Company will undoubtedly complete its road as far as Richmond during the present year. The Galveston and Red River Railway Company, and the Galveston, Houston and Henderson Railroad Company expect to complete twenty-five miles of their respective roads by the 30th of January, 1856, so as to secure the bonus of sixteen sections to the mile.

“These companies will then have to continue their roads at the rate of twenty-five miles a year or lose the benefit of the bonus of sixteen sections. If they fail to do this, the Harrisburg company and the Henderson company may still have the benefit of the bonus of eight sections, but the

latter to secure even this, will have to construct an additional fifteen miles on or before the 1st of March, 1857, to save its charter.

“The Houston company has already lost the benefit of the bonus of eight sections by failing to complete ten miles of its road within the time prescribed by its charter.

“It is possible that some of the other companies may be able to avail themselves of the sixteen section bonus, as only those which terminate on the Gulf coast, the bays thereof, or on Buffalo Bayou, are subject to the provision which requires the construction of twenty-five miles on or before the 30th day of January, 1856, though it is believed that few, if any of them, will ever build road enough to save their charters.

“It is not generally supposed that either of the three companies before named will be able to construct their roads at the rate of twenty-five miles a year after the 30th of January next, so as to secure the sixteen section bonus, unless they are assisted by a liberal loan of money from the State. We can not, therefore, expect that much progress will be made for many years to come in the construction of railroads in this State by private corporations, beyond the completion of those tracks already graded, unless such a loan shall be authorized, or that provision of the act donating lands to railroads, which requires these companies to construct twenty-five miles a year, is repealed, for it is generally conceded that they will not, at present, yield a sufficient profit to induce individuals to invest capital in them, without the advantages to be derived from the land bonus.

“The passage of a law, similar to that attempted at your last session, authorizing the loan of eight thousand dollars a mile, might enable these three companies, if they were to have the sole benefit of it, to extend their roads about seventy-five miles in the next three years; this, it is true, would afford great relief to those sections of the State accessible to them, but it would be those sections that are least in need of railroad facilities, for they are already nearest to a market, and would leave the greater part of the State, which

is now suffering for want of such facilities, in the same destitute situation it now is, without any certain prospect of being supplied.

“What our citizens need is a general system of internal improvements by railroads, river improvement and canals, that will extend its benefits to every section of the State as near as practicable, and give them a cheap transportation of their productions to a market.”

In 1872, Attorney-General Alexander gave to A. Bledsoe, the Controller, his opinion that the act to incorporate the International Railroad Company and to provide for the aid of the State in its construction, was a special or private act, and that the Secretary of State viewing it in this light had caused it to be printed in the volume of special laws, and that, therefore, the State Treasurer could not lawfully sign the bonds which the Legislature had authorized to be issued in favor of the railroad company.

At the request of Mr. Honey, the State Treasurer, and the railroad authorities, Gov. Pease expressed his written opinion in regard to the matter; which he rendered in a letter to the Treasurer in April, 1872. In this opinion he took the grounds that the character of an act of the Legislature must be determined by the general principles of the law which define what are public and what are private statutes; that this can not sometimes be easily determined, from the fact that statutes often relate to matters which partake of both a public and private character. The definition rendered by the most precise writers is that public statutes relate to the State, or to the people in their corporate capacity, and private statutes concern only the interest or benefit of certain individuals or particular classes of men.

Statutes are generally intended to be public, and a private statute is an exception to the rule. According to these principles the act in question should be considered a public statute. This is indicated both by its title and purpose, which relate both to the State and the people at large. The act grants bonds of the State to the railroad company and requires that they shall be signed by the Governor and

Treasurer, and countersigned and registered by the Controller, and to be then delivered by the Governor to the proper officer of the company, whenever it should be proven, as provided by the act, that the company had complied with certain conditions. That the Controller should then cause a tax to be assessed upon all taxable property in the State, and upon all occupations, proportioned to the taxes levied by general law for a sum sufficient to pay the interest on the bonds.

Gov. Pease contended that these explicit provisions clearly created a debt against the State, and provided for its payment by taxation in the manner provided by the Constitution; that it is the presumption of law that all statutes enacted by the Legislature are constitutional, and that, therefore, it is the duty of the officers of the State to carry their provisions into effect until they are declared unconstitutional by a competent judicial tribunal, unless they are enjoined from doing so by competent authority. Otherwise, if any officer of the State could refuse to carry out the provisions of the law which did not conform to his ideas of the Constitution the worst confusion and anarchy would be the result.

That writers on constitutional law in commenting on provisions, similar to that in the Texas Constitution, which declares that "every law enacted by the Legislature shall embrace but one object, and that shall be expressed in its title," assert that this clause is not designed to embarrass legislation by multiplying the number of bills, but is intended to put an end to vicious legislation and to require that in every case the proposed measure shall stand upon its own merits.

The Supreme Court of Texas (20 Texas Rep. 782) has held that this section doubtless was to prevent embracing in an act, having one ostensible object, provisions having no relevancy to that object, but really designed to effectuate other and wholly different objects, and thus to conceal and disguise the real object proposed by the provisions of an act under a false and deceptive title.

That the object of the act in question was clearly expressed in its title and the purpose for which the aid was given was also clearly defined, and there was no good reason to suppose that a court would ever decide the act to be unconstitutional.

That, however, much an officer of the State may be opposed to the provisions of an act or its policy, he is not thus justified in refusing to carry it into execution.

This hesitancy on the part of the Controller to sign these bonds gave rise to the *mandamus* case of Bledsoe, Controller, *v.* The International Railroad Company, reported in 40 Texas, in which the court held that a writ of *mandamus* did not lie against an executive officer of the State government; but this opinion was overruled by Chief Justice Moore in *Kuechler v. Wright*, decided at the same term.